IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 22184

JUDITH ANN LIBERIAN TRANSPORT
CORPORATION, LTD., a foreign
corporation,

Defendant and Third Party
Plaintiff-Appellant,

v.

WAYNE CRAWFORD,

Plaintiff-Appellee,

BRADY-HAMILTON STEVEDORE
COMPANY, a corporation,

Third Party Defendant-
Appellee

APPELLANT'S REPLY BRIEF

Appeal from the Final Judgment of the United
States District Court for the District of Oregon

THE HONORABLE ROBERT C. BELLONI, Judge

KING, MILLER, ANDERSON, NASH & YERKE
CURTIS W. CUTSFORTH
1200 American Bank Building
Portland, Oregon 97205

Attorneys for Appellant

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ARGUMENT

A. Plaintiff's Claim against Shipowner.

1. The trial court erred in giving plaintiff's Requested Instruction No. 7.

This instruction told the jury that "if the injuries to the plaintiff were caused by some malfunctioning in the rigging used for unloading the vessel" Shipowner would be liable to the plaintiff for unseaworthiness.

Shipowner's objection is that malfunctioning in the rigging was clearly not one of the specifications of unseaworthiness charged by plaintiff. Moreover, there was no evidence that plaintiff's accident was in any way caused by any malfunctioning in the rigging. The jury was thus expressly advised that it might find liability on Shipowner's part upon a specification neither alleged nor proved.

Plaintiff's brief concedes that the charge of unseaworthiness relating to the rigging--that the sling being used "was not provided with a proper hook or other securing device to keep it from slipping"--is a charge of improper gear or rigging (Pl. Br. 13). Unseaworthiness due to the use or selection of improper gear, of course, is an entirely different thing than unseaworthiness resulting from the malfunctioning of properly selected gear.

Plaintiff's main argument here appears to be that the jury could not have been misled, in view of the trial court's instructions taken as a whole. Plaintiff quotes a statement referred to by this court in

Sunkist Growers, Inc. v. Winckler & Smith
Citrus Prod. Co. (CA9, 1960) 284 F2d 1,
Rev'd 370 US 19, 82 S Ct 1130, 8 Led2d 305

> "Even if a single instruction is erroneous, it does not call for reversal if it is cured by a subsequent charge or by a consideration of the entire charge."

However, plaintiff did not quote the ensuing language of this court, as follows:

> "We agree with that general principle, yet if a substantial and prejudicial error is made in the giving of but one instruction, the verdict cannot stand." (284 F2d 23).

It may be that this instruction would not mislead experienced counsel or other persons familiar with the maritime terminology. However, it may well have misled a jury of laymen.

2. <u>The trial court erred in giving plaintiff's Requested Instruction No. 8</u>.

This instruction is as follows:

> "You are instructed that the duties imposed upon the shipowners and the law in respect to the safety of employees are nondelegable; that is to say, the employer cannot delegate the performance of those duties to any other agent or employee. The defendant in this case cannot absolve itself of the performance of those duties, nor could it delegate the performance of them to employees, to the stevedore company, nor to anyone else, but they adhere to the defendant shipowner without the possibility of suspension or interruption." (Tr. 279).

It may be, as plaintiff's brief urges, that the <u>purpose</u> of this instruction "was to advise the jury that responsibility for unseaworthiness rests upon the Shipowner, even though someone other than the Shipowner may be at fault for creating the unsafe condition." However, the trial court did more than this. The trial court expressly directed the jury that Shipowner could not lawfully delegate the <u>performance</u> of the duties in question. After stating that Shipowner could not "absolve itself of the

> [illegible] professional and technical [illegible] [illegible] the [illegible] (Tr. [illegible]).

It may be that this instruction would not achieve [illegible] or [illegible] with the [illegible] terminology. However, it may still have caused a deal of harm.

5. The trial court erred in giving plaintiff's requested instruction No. 4.

This instruction is as follows:

> "You are instructed that the [illegible] (Tr. [illegible]).

It may be [illegible] that the *purpose* of this instruction [illegible] responsibility [illegible] [illegible]. However, the [illegible] the *[illegible]* [illegible] performance of those duties"--which certainly indicates that the responsibility for such duties remains with Shipowner--the trial court went further and instructed "nor could it delegate the performance of them to employees, to the stevedore company nor to anyone else." If this latter clause means anything at all, it means that Shipowner could not properly or lawfully delegate or entrust to others the performance of such duties. All will agree that it was not the trial court's purpose to so advise the jury. The fact remains, however, that the jury was so instructed. Shipowner called the erroneous language to the attention of the trial court by timely exception but the jury was sent to its deliberations with this admonition unchanged.

Whatever assumptions the jury might otherwise have made concerning the propriety of Shipowner's delegation of the discharge operations to Stevedore, this instruction expressly labeled such delegation as improper. It follows that the jury's logical conclusion would be that Shipowner must necessarily be liable for any injury arising out of such improper delegation. Shipowner was obviously prejudiced by the giving of this instruction.

3. The trial court erred in failing to give Shipowner's Requested Instruction No. 24.

This instruction would have advised the jury as

follows:

> "The plaintiff contends in this case that the ship was unseaworthy because of improper stowage of cargo. I instruct you that the method or manner of cargo stowage renders a vessel unseaworthy only when it results in an unreasonable hazard to the safety of the men required to work in and around the cargo. The mere fact that a particular manner of stowage requires more effort in order to discharge the cargo, or requires the use of other and different equipment than may be customarily used for cargo discharge, does not make the vessel unseaworthy so long as methods and equipment are available which can be used to discharge the cargo without undue or unreasonable risk to the safety of those performing the work." (R. 72).

This instruction relates only to the charge of unseaworthiness based upon improper stowage. The standard embodied in the instruction--that stowage is unseaworthy when it results in an unreasonable risk or hazard to the safety of the men engaged in discharge--follows the holding of this court in

Blassingill v. Waterman Steamship Corp. (CA 9, 1964) 336 F2d 367

and we do not understand plaintiff to dispute its correctness.

Plaintiff, however, does argue that the instruction as a whole is erroneous, saying "It is not the availability of safe methods or equipment but the extent of their actual use aboard the ship which determines whether the vessel is seaworthy or unseaworthy." Plaintiff misses the point. Shipowner does not contend that a vessel which has available to it safe methods or equipment for discharge may not be

> "The [illegible] contends in this case that the [illegible] was [illegible] because of improper stowage of cargo, I suppose, and that the [illegible] or method of stowage [illegible] a [illegible] for the safety of the [illegible] around the [illegible]. The [illegible] that a particular method of stowage [illegible] to [illegible] the [illegible], to require the use of other and different equipment [illegible] cargo [illegible], when you [illegible] the [illegible] methods and equipment which had to be used to discharge the cargo [illegible] of those performing it." (R. 72).

This instruction applies only to the charge of steve-dore's [illegible]. The [illegible] — that [illegible] is [illegible] of the [illegible] — [illegible] the [illegible] of this point in

[illegible]

[illegible]

[illegible], however, does argue that the instruction as a whole is erroneous, saying "it is not the *mere* [illegible] of [illegible] methods or equipment but the [illegible] of their [illegible] the [illegible] which determines the [illegible] of [illegible]." [illegible] the point. [illegible] that [illegible] which [illegible] methods or equipment [illegible] rendered unseaworthy by the failure to use them. What Shipowner is saying is that the failure to use an available safe method or appliance in effecting discharge of cargo does not thereby make the stowage unseaworthy.

The stowage of the subject vessel was alleged to constitute unseaworthiness. Shipowner denied this. Evidence was presented that the cargo stow in question was consistent with the usual and customary practice and that the manner of stowage did not pose an unreasonable risk of harm to those who would be engaged in the discharge. To be sure, plaintiff presented evidence to the contrary, mostly in the form of imprecise, subjective statements to the effect that the stow was "improper" and that it was "dangerous" to unload the cargo in the manner being employed.

As pointed out by witness Finley (Tr. 245) anytime a longshoreman goes aboard a ship to discharge heavy cargo, there is some danger of injury and longshoring, even under the best of conditions, is a "dangerous" job. It was therefore important that the jury be advised as to the appropriate standard to be used in determining whether the stow in this instance presented such degree of danger as to render the vessel unseaworthy.

The proper test, as seen, is whether an unreasonable risk of harm is presented. Whether a particular manner of

cargo stowage creates an unreasonable risk of harm can obviously be decided only in relation to the method or manner to be employed in the discharge. Where a method of discharge, using standard equipment and procedures, is available which will permit a reasonably safe unloading operation, it would be absurd to urge that the stow is unseaworthy. This is what the evidence relied upon by Shipowner tended to prove and the requested instruction would have told the jury that if such evidence was believed, the charge of unseaworthy stowage was not made out. It was Shipowner's right to have its theory of the case so presented to the jury. The failure to do so was doubly prejudicial to Shipowner here, where its indemnity right as against Stevedore quite likely was affected by the jury's finding on the charge of unseaworthy stowage.

4. The trial court erred in failing to give Shipowner's Requested Instruction No. 25.

This instruction would have advised the jury as follows:

> "I instruct you that the fact that cargo is stowed in such a manner as to require the use of a pick-up sling in order to discharge it does not render the vessel unseaworthy." (R. 73).

As pointed out in Shipowner's opening brief, the evidence does not support the conclusion that the use of a pick-up sling, in and of itself, will necessarily render a discharge operation such as that involved here so

unreasonably hazardous as to constitute unseaworthiness.

It stands undisputed in the record that methods of using the pick-up type sling were available which would have eliminated the hazards of which plaintiff complains (see Shipowner's opening brief, page 23). It follows that the mere stowage of cargo so as to require the use of a pick-up sling does not, without more, create a condition of unseaworthiness. Again, the crux of the matter is the method of using the sling. If an improper or unreasonably dangerous method is adopted then, of course, the vessel is rendered unseaworthy. This is not the equivalent of an unseaworthy stow.

The requested instruction did not, as plaintiff argues, remove the issue of unseaworthy stowage from the jury. It merely eliminated one of the several particulars which plaintiff contended rendered the stow unseaworthy, because such particular was not supported by the evidence. Shipowner was entitled to have the instruction given and it was error for the court to decline to do so.

B. Shipowner's Indemnity Claim against Stevedore

1. The trial court erred in denying Shipowner's motions for directed verdict and for judgment n.o.v. against Stevedore.

Stevedore concedes that the verdict in favor of plaintiff and against Shipowner was necessarily based on

a finding that the vessel was unseaworthy either because of the sling or the condition of cargo stowage (Stevedore's Br. 6). It is thus established in this case that Shipowner's liability to plaintiff resulted either

1) because the sling selected, furnished and used by Stevedore created an unreasonable risk of harm to Stevedore's employees engaged in the discharge operation, or
2) because the manner in which the cargo was stowed presented an unreasonable risk of harm to Stevedore's employees when they undertook to discharge it by the method and with the equipment utilized.

Stevedore then argues that even though Shipowner's liability resulted from Stevedore's selection and use of an unreasonably dangerous sling Stevedore could still be found to have performed its services in a safe and workmanlike manner.

Or, if it is assumed that Shipowner's liability stems from the unreasonable hazards presented by the cargo stow, Stevedore contends that it can be held to have fulfilled its warranty of safe and workmanlike service even though it is undisputed that, with full knowledge of all such hazards, it proceeded with the discharge operations, thereby continuing to expose its employees to such hazards.

Stevedore's argument is in direct contradiction with the opinions of this court and other courts which have considered the questions raised.

At the outset, Stevedore's principal contention that an award of indemnity requires an express jury finding that the Stevedore breached its warranty of safe and workmanlike service, and can never be allowed as a matter of law, is expressly put to rest by the decision of this court in

Seattle Stevedore Company v. Compania
Maritima (CA9, 1967) 373 F2d 9

In that case, where a similar contention was made, this court stated:

> "Since Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co., Inc., 376 U.S. 315, 84 S.Ct. 748, 11 L.Ed.2d 732 (1964), there can be no reasonable doubt that the stevedore's implied warranty to the shipowner is governed by the same standard as and is coextensive with the shipowner's obligation to seamen and others in that category. There, the Court, in sustaining a judgment of indemnification for the shipowner against the stevedore, invoked the same test to determine whether the stevedore had breached his implied warranty of performance as it used in Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 80 S.Ct. 926, 4 L.Ed.2d 941 (1960) to determine whether a shipowner in a suit by a seaman had breached his duty to provide a seaworthy ship. Italia, 376 U.S. at 322, 84 S.Ct. at 753.
>
> "Here, based upon the facts that the floor was uneven, that the rolls were heavy, and that only one track was used, the district court expressly found: 'Because of the manner in which this work was conducted under the supervision of the stevedore foreman, the vessel was unseaworthy.' These facts fully justify such a

> finding, which is tantamount to a finding of a breach of the Stevedore's implied warranty.
>
> "We hold that a stevedore who renders a vessel unseaworthy, by virtue of that very fact, breaches his warranty of workmanlike performance." (Emphasis supplied.)

The above quoted language, and also the decision therein referred to,

> Italia Societa v. Oregon
> Stevedoring Co., Inc. (1964)
> 376 US 315, 84 S Ct 748,
> 11 Led2d 732

make clear that the stevedore's implied warranty is "coextensive" with the shipowner's obligation to shipboard workers. This completely negates Stevedore's argument that the vessel could be rendered unseaworthy because of the sling furnished and used by Stevedore without there being a concurrent breach of Stevedore's implied warranty.

The same principle applies with respect to a ship owner's liability from unseaworthiness which, although initially created by it, is brought into play by the stevedore so as to result in injury. Clearly, there is just as much a failure by the stevedore to perform its work properly and safely when it knowingly exposes its employees to an existing, unreasonably dangerous condition as when it creates the condition in the first instance. The extensive list of cases cited in Shipowner's opening brief (pp 33-45) awarding or approving indemnity in such circumstances demonstrate conclusively that such is the law.

Stevedore's argument, similar to that attempted in connection with the sling, is that it could be found to have performed its contract in a proper manner regardless of the finding that an unreasonable risk of harm was presented to those undertaking to unload this particular cargo and the undisputed fact that Stevedore, with full knowledge of the risk thereby presented, nevertheless proceeded with the discharge and continued thereby to expose its employees to such risk. As Stevedore's brief puts it (pp 8-9) "The jury was easily justified in concluding the stevedore had not breached its contract; but, in fact, it had worked safely, expertly and in a workmanlike manner."

It is, of course, impossible to comprehend how proceeding with work which subjects one's employees to an unreasonable risk of harm could ever be characterized as working "safely and expertly." Stevedore cites no authority in support of this remarkable proposition and, it is submitted, there is none.

Stevedore appears to suggest that the question of whether a stevedore has breached its warranty of safe and workmanlike service is, <u>in every case</u>, a question of fact. It is asserted that a jury determination of such question is <u>always</u> guaranteed in a diversity case, under

<u>Atlanta & Gulf Stevedores v. Ellerman Lines, Ltd. (1962) 369 US 355, 82 S Ct 780, 76 Led2d 798</u>

That decision does not support Stevedore's

argument. In that case the plaintiff longshoreman was injured when a bale of burlap fell on him during unloading. The bales were being removed by means of hooks fastened to metal bands which were strapped around the bales. The plaintiff sued the vessel owner, asserting unseaworthiness by reason of defective bands and negligence in using bale hooks and in failing to provide a safe place to work. The ship owner impleaded the stevedore, seeking indemnity for any liability that might result on the plaintiff's claim. The jury returned a verdict for the plaintiff and a verdict against the ship owner on its indemnity claim. On appeal, the Third Circuit affirmed the judgment for the plaintiff but reversed the judgment in favor of the stevedore on the basis that a finding of negligence on either ground charged would necessarily mean that the stevedore had breached its obligation of workmanlike service. The Supreme Court, on certiorari, reversed the Court of Appeals and reinstated the judgment in favor of the stevedore. It did so, not because it disagreed with the reasoning of the Court of Appeals that a jury finding of negligence against the ship on either of the two grounds asserted would mean that the ship was entitled to indemnity as a matter of law, but because the verdict against the ship conceivably could have been based solely upon the unseaworthiness charge (defective bands) for which the

stevedore would not be responsible.

The decision is actually strong authority for Shipowner's position in the instant case. For it is implicit in the holding that, had the plaintiff's claim been limited to the two charges of negligence (which, incidentally, bear a strong similarity to the two charges of unseaworthiness in the case at bar--(1) use of an improper unloading appliance and (2) unsafe working area due to improper stowage) a finding for the plaintiff on either ground would necessarily carry with it the conclusion that the stevedore had breached its obligation.

Stevedore also argues that the instant case is somehow to be distinguished from the many "proceeding with the work in the face of known danger" cases cited by Shipowner because here the method of discharge employed by Stevedore was the only "practicable" one. Stevedore's brief states (p 8), "There was no evidence that stopping work offered a reasonable alternative."

The obvious rejoinder, of course, is that cessation of the work is always required, and is the <u>only</u> permissible alternative, when to continue is to subject the workmen to an unreasonable risk of harm (which must be taken as established if the finding of unseaworthiness is assumed). Stevedore's argument that it need not stop work, and could proceed with impunity to expose its employees to a dangerous condition if there were no other

practicable method of discharge was expressly disapproved by this court in

Crescent Wharf & Warehouse v. Compania
Naviera De Baja Calif. (CA9, 1966)
366 F2d 714, 719

Moreover, Stevedore's conclusion that there was no way whatever to alleviate the hazard presented, and that the only alternative was to leave the cargo in the vessel forever, is clearly fanciful. The record contains considerable evidence of methods and procedures which would have eliminated or reduced the risk. The use of a choker type sling was suggested (Tr. 83, 165, 167-8), as was using the ship's winches, rather than dockside cranes (Tr. 162). Witness Cowan testified that the proper method of discharging cargo of this type with a cradle type sling was to lift it only a very few inches with the pickup sling and then to put blocks under it, rather than to raise the load three or four feet as was being done when plaintiff was injured (Tr. 156).

Even if it is believed that none of these methods would satisfactorily reduce the hazard, there still remains no evidence that other methods and equipment were not available which would do so. The testimony that the method being used was the only "practicable" one had reference, in that context, to economic practicability. Obviously, there exist means whereby this cargo could have

been removed without unreasonably endangering the lives or persons of anyone. The simplest way, perhaps, would be simply to cut the bands with which the steel rods were bundled and remove the rods individually, one at a time. Certainly, no heavy sling load of metal would fall on anything or anybody if this were done.

That method, and others of varying degrees of elaborateness, might well be more expensive--i.e. less practicable--than the means customarily employed. But that is not Stevedore's concern. A stevedore always has the option of stopping the work and leaving it up to the ship to resolve the problem. Further, as stated in

Hugev v. Dampskisaktieselskabet International (DC Cal, 1959) 170 F Supp 601, aff'd (CA9, 1960) 274 F2d 875 cert denied 363 US 803, 80 S Ct 1237, 4 Led2d 1147

> "The stevedoring contractor knows that the ship has been at sea; that she may be in many respects dangerous to the life and limb of an unskilled person; that if a condition is found which is unsafe for the professional longshoreman, as a rule the contractor can remedy it at the expense of the shipowner; that if the stevedoring operations are thereby delayed, the shipowner normally must pay for standby time." (Emphasis supplied, page 610)

Economic practicalities were not a problem to Stevedore in this case, in any event. The stevedoring contract between Shipowner and Stevedore (Ex. 31, Sections IX G and H) expressly provided that where the cargo was not in good order, or in cases where it was necessary to handle cargo under special conditions, extra compensation

was to be paid Stevedore.

With respect to Stevedore's argument that a directed verdict on the indemnity issue is never proper, it is interesting to note that one of the cases cited in Stevedore's brief,

Old Dominion Stevedoring Corp. v. Polskie Linie Oceaniczne (CA4, 1967) 386 F2d 193

holds precisely the opposite. In that case the plaintiff received a jury verdict against the shipowner, on the basis of which the court entered judgment for indemnity over against the stevedore. The questions raised, as seen from the court's own statement, were quite similar to those presented here:

> "We next consider Old Dominion's appeal from the court's entry of a directed verdict against it on the issue of indemnity. It is the stevedore's contention that the shipowner brought about the defect which caused plaintiff's injury and since it was aware of such defect the stevedore should not be made to indemnify the shipowner. *It is also argued that the jury should have passed on the issue of whether the stevedore failed to perform its operation in a workmanlike manner*." (Emphasis supplied, page 196).

The court, in affirming the entry of a directed verdict against the stevedore stated:

> "It is undisputed that the stevedore had knowledge of the unseaworthy condition and did nothing to remedy it despite its opportunity to do so. *The stevedore permitted its men to work in the hold after it knew of the presence of the syrup and this set the unseaworthy condition into play*.

* * *

> "Thus it is clear that the law permits a stevedore to be held liable to indemnify the shipowner where it has knowledge of an unseaworthy condition or brings such conditions into play.
>
> * * *
>
> "In applying these principles to the instant case we reach the conclusion that the court was correct in directing a verdict for the shipowner against the stevedore. Three witnesses, all employees of Old Dominion, testified clearly and without equivocation that they observed a sticky substance on the deck where they were working. One of these, Wilson, admitted that he possessed the authority to have the work stopped and to order the substance removed. Applying the law as discussed above, we are of the firm opinion that there could have been only one reasonable conclusion as to the verdict. The credibility of these witnesses was not in question. Giving the stevedore the benefit of every inference that may reasonably be drawn from the evidence we are still left with the inescapable conclusion that its knowledge of the presence of the slippery substance on the deck of the hold rendered it liable for failure to perform its job properly and safely, and in breach of its implied warranty of performance of its undertaking in a workmanlike manner. There was no factual controversy which the jury had to decide for the facts were clear and undisputed." (Empbasis supplied, pages 197-198)

Another case where a directed verdict of indemnity (after a jury verdict against the shipowner) was held to be proper is

Mortensen v. A/S Glittre
(CA2, 1965) 348 F2d 383

The cases of

Mosely v. Cia. Mar Adra S.A. (CA2,1966)
362 F2d 118

and

Caputo v. U.S. Lines Company (CA2, 1963)
311 F2d 413, cert. denied 374 US 833,
83 S Ct 1871, 10 Led 1055

both cited in Shipowner's opening brief, also hold that, under circumstances similar to those in the instance case, the shipowner is entitled to indemnity against the stevedore as a matter of law. Stevedore's only response to these decisions is to suggest that they are either wrong or forgetful (Stevedore's Br. 11, 12). In fact, they are neither. A directed verdict was proper in the cases referred to, as in the present case, because there is no real factual issue for determination under the state of the evidence.

2. The trial court erred in failing to give Shipowner's Requested Instructions 18, 19, 21 and 22.

Stevedore's only response to Shipowner's claim of error based upon the trial court's failure to give the indicated instructions appears to be that the instructions so requested are incorrect. For example, Requested Instruction 18, which was to the effect that if the jury found against Shipowner because the sling furnished by Stevedore was inadequate or unsafe, the Shipowner was entitled to indemnity, is criticized as omitting "the essential element of breach of contract by substandard performance" (Stevedore's Br. 12).

Reference to this court's decision in the

Caputo v. U.S. Lines Company (CA2, 1963)
311 F2d 413, cert. denied 374 US 833,
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Reference to this court's decision in the

Seattle Stevedore Company case, cited above at page 10, will show that the instruction is practically a paraphrase of the "coextensive" rule which is there so clearly set out. That is, if a vessel is rendered unseaworthy by the stevedore--in this example, by furnishing and using an inadequate or unsafe sling--the stevedore has breached his warranty of workmanlike performance "by virtue of that very fact." Assuming that some reason existed (which it did not) why a directed verdict should not have been given, this and the other requested instructions on the indemnity issue should clearly have been given. The failure to do so, in the context of this case, was extremely prejudicial to Shipowner. For an additional case so holding, see

Sea-Land Service, Inc. v. Matson Terminal Co.
(Cal App, 1967) 61 Cal Rptr 756

3. The trial court erred in failing to submit the factual issues to the jury by means of the requested special verdict form.

Stevedore states that the trial court here rejected the request for a special verdict because of the difficulties of application. Shipowner respectfully suggests that, on the contrary, the difficulties have been created by the failure to follow this court's admonition with reference to the use of special interrogatories in this type of case.

CONCLUSION

Based upon the foregoing, Shipowner respectfully urges that the judgment below in favor of plaintiff be vacated and a new trial ordered as between plaintiff and Shipowner; that the judgment below in favor of Stevedore and against Shipowner be reversed and judgment entered in favor of Shipowner on its indemnity claim; in the event the court determines that Shipowner is not entitled to entry of judgment on its indemnity claim, the indemnity case be remanded for new trial.

Respectfully submitted,

KING, MILLER, ANDERSON, NASH & YERKE

CURTIS W. CUTSFORTH

1200 American Bank Building
Portland, Oregon 97205

Attorneys for Defendant-Appellant
JUDITH ANN LIBERIAN TRANSPORT
CORPORATION, LTD.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, the foregoing brief is in full compliance with those rules.

CURTIS W. CUTSFORTH
Of Attorneys for Appellant